

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

VIKING SECURITY

Employer

and

DARCY SIMONI

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 26

Union

Case 18-RD-2528

DECISION AND ORDER

Petitioner seeks an election to decertify the Union in a unit of the Employer's security officers.¹ The Petitioner contends that the unit is a single-employer unit consisting of security officers employed by the Employer. The Employer and the Union contend that the bargaining unit is a multiemployer unit consisting of security officers employed by the Employer and three other companies who employ security officers. The other three companies are Securitas, American Security L.L.C, and American Commercial Security Services (ACSS).² The Union contends that the petition must be

¹ All parties stipulated that security officers, as that term is used in the petition, are guards within the meaning of Section 9(b)(3) of the National Labor Relations Act (Act) and as that term is defined in the NLRB's jurisprudence. All parties further stipulated that the Union admits both guard and nonguard employees to membership. Section 9(b)(3) of the Act prohibits the Board from certifying a guard/nonguard union as the bargaining representative of a unit of guard. Thus, the Board would be precluded by Section 9(b)(3) from certifying the Union as the representative of the employees involved here. However, the Board is authorized to conduct a decertification election and in the event the Union wins an election, the Board will only certify the arithmetical results of the election. Fisher-New Center, Co., 170 NLRB 909 (1968); but see University of Chicago, 272 NLRB 873 (1984).

² American Commercial Security Services and Securitas were parties in interest during the hearing.

dismissed because it is not coextensive with the recognized multiemployer bargaining unit. The Employer contends that further processing of this petition is barred because the Union and the companies comprising the multiemployer bargaining group have executed a contract. The Petitioner and Union contend that there is no contract bar. After reviewing the record, I conclude that the Employer is part of an established multiemployer bargaining group. I further conclude that this petition should be dismissed because the multiemployer bargaining group and Union have executed a contract that bars further processing of this petition. Therefore, the petition is dismissed.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The labor organization involved claims to represent certain employees of the Employer.

³ The Employer, Viking Security, is incorporated in Minnesota and New York and has an office and place of business in Minneapolis, Minnesota where it is engaged in providing security and janitorial services on a contract basis for other companies. During the past twelve months, a representative period, the Employer purchased and received goods and services at its Minneapolis facility valued in excess of \$50,000 from suppliers located outside the State of Minnesota and earned gross revenues in excess of \$50,000.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The first section of this decision is a review of Board law regarding multiemployer bargaining units and contract bar. The second section analyzes the evidence – which is not in dispute – revealed by the record. Finally, I will explain my conclusions that the parties have established a multiemployer bargaining unit and that further processing of this petition is barred by a contract between the multiemployer group and the Union.

STATEMENT OF THE LAW

Multiemployer Bargaining Units

In determining whether a multiemployer unit has been established the critical inquiry is whether the parties have demonstrated an unequivocal intention to be bound by group action. Taylor Motors, Inc., 241 NLRB 711 (1979). Factors that the Board considers in determining whether a multiemployer bargaining unit has been established include the following: significant history of multiemployer bargaining, agreement to be bound by group negotiations, established procedures for group decision making, multiemployer recognition clause, and Union membership votes where employees of the various employers vote as a group. Id.

Contract Bar

In order for an agreement to serve as a bar to an election, it must satisfy certain substantive and formal requirements which have been well established by

Board case law. In Appalachian Shale Products Co., 121 NLRB 1160 (1958), the seminal case setting forth these requirements, the Board held that to constitute a bar to an election, an agreement containing substantial terms and conditions of employment sufficient to stabilize the parties' relationship must be signed by the parties prior to the filing of the petition. The agreement need not be a formal document. Rather, an informal document or series of documents, such as a written proposal and written acceptance, which nonetheless contain substantial terms and conditions of employment, are sufficient, if signed. Seton Medical Center, 317 NLRB 87 (1995); USM Corp., 256 NLRB 996 (1981). It is also immaterial that the contract does not take the form of a single self-contained document. Canon Boiler Works, 304NLRB 457 (1991); Television Station WVTV, 250 NLRB 198 (1980). Finally, in representation cases, the Board has consistently limited its inquiry to the four corners of the document or documents alleged to bar an election and has excluded the consideration of extrinsic evidence. United Health Care Services, 326 NLRB 1379 (1998); Union Fish Co., 156 NLRB 187, 191-192 (1965). Thus, when the contract itself contains no express provision for prior ratification, prior ratification will not be required as a condition precedent for the contract to constitute a bar. Appalachian Shale Products Co., 121 NLRB at 1163.⁴

⁴ The contract-bar rules apply even in cases where, as here, a collective-bargaining agreement covers a unit of guards between an employer and a labor organization, where the labor organization admits both guards and nonguards to membership (a guard/nonguard union). Stay Security, 311 NLRB 252 (1993) (concluding that Section 9(b)(3) of the Act does not prohibit the application of the contract bar rules to block the processing of a petition where there is a collective-bargaining agreement between an employer and a guard/nonguard union representing a unit of guards).

THE RECORD EVIDENCE

The evidence is not in dispute. The Employer employs about 53 security officers. On August 21, 2003, the Employer voluntarily recognized the Union as the exclusive representative of its security officers upon a showing that the Union had obtained authorization cards from a majority of the Employer's employees. The Union then secured voluntary recognition from Securitas on July 28, 2003, American Security on January 15, 2004, and ACSS on March 22, 2004.

Negotiations for an initial master contract that would cover the Employer, Securitas, American Security and ACSS commenced on March 23, 2004. A representative from each of the four security companies attended all but one of the bargaining sessions.⁵ Guy Thomas, Vice President-Labor Relations for Securitas acted as the chief spokesman for the four security companies. Dan Klingensmith was the chief spokesman for the Union. Klingensmith testified that early in organizing campaigns he had discussions with the four security companies and that the four security companies decided that they would bargain together and there would be one contract for all four companies. On August 12, 2004, Guy Thomas sent the Union a complete contract proposal that would cover the four security companies. In the cover letter, which was admitted into evidence, Thomas stated "in order to avoid any confusion and/or duplication of effort, please direct any/all future contact/communications regarding these negotiations to my attention."

During negotiations the Union never received any proposals from an individual company and the Union did not make any proposals to any individual companies.

⁵ At one session, the Employer's representative did not attend because he was on vacation.

When the four companies and the Union agreed on language for an article of the contract, the article was signed off by Klingensmith "For the Union" and Thomas "For the Companies." The Union and the companies agreed to a recognition clause on November 12, 2004. The Recognition clause provides:

The Company recognizes the Union as the exclusive bargaining agent for its employees engaged in the contract security industry, wherever employed in the covered territory, performing security services, including all full-time and part-time security guards/officers including working lead personnel employed in office buildings, public buildings, public arenas, convention centers in locations where the Union represents the janitorial employees in the Twin Cities Metropolitan Area, but exclusive of:

- (a) All executive, salaried supervisors, sales employees, clerical, professional, as defined by law, and all other non-security/guar/officer position employees of contract security companies.
- (b) Hourly Paid Supervisors, Foremen. An "hourly paid supervisor" or "foreman" is defined as an employee with the authority to hire, discharge, discipline or otherwise effect changes of the status of employees on a job.

Whenever the word "Company" is used in this Agreement, it shall apply only individually to the companies covered by this Agreement, i.e. those listed in the Appendix, and not to any of those excluded; and none of the provisions on this Agreement shall apply to excluded employees.

The Appendix lists Securitas, American Security, Viking Security and ACSS as signatories to the contract. Klingensmith testified that the final paragraph means that the contract does not apply to nonunion companies.

On February 25, 2005, the Union and the companies reached a tentative agreement on all of the issues. In evidence is the "last best and final offer", which represents the complete agreement between the union and the four companies. The "last best and final offer" was signed by Thomas "For the

Companies” and by Klingensmith “For the Union” on February 25, 2005.

Representatives from all four companies were present when the February 25 offer was signed and no one objected to Thomas signing for all four companies.⁶

At no time during negotiations did the Employer state that it did not want to be bound by group action

Approximately one week after they reached an agreement, the Union mailed a notice to all of the security officers who were members of the Union and employed by the four companies. The notice invited the employees to a ratification meeting that would take place on March 19. At the ratification meeting all of the Union members were given identical ballots and all of the ballots went into the same square box. All of the ballots read “Yes, I accept the proposal” or “No, I reject the proposal.”

The proposed contract was ratified by those voting by a two to one margin. The Petitioner, a security officer for the Employer, filed this decertification petition on March 18, 2005.

CONCLUSION

I conclude that the Employer agreed to a multiemployer bargaining unit. The evidence is undisputed that the four companies agreed to bargain together and agreed to bargain one contract to cover all four companies. Additionally, the four companies actually bargained as a multiemployer bargaining group with Guy Thomas acting as the representative for the four companies. Moreover, the recognition clause, agreed to on

⁶ After the parties reached the agreement they realized there was a problem with Article 12, which had been typed up inaccurately. Union representative Klingensmith called Guy Thomas on the telephone, and Thomas also agreed that there was an error in Article 12. On March 8, 2005, Klingensmith and Thomas signed the corrected Article 12. There were no further discussions or negotiations after March 8.

November 12, 2004, defines the unit as a multiemployer unit. Finally, the employees of the four companies voted as a group to ratify the February 25 agreement. Thus, I conclude that the Employer has agreed to a multiemployer unit and therefore any decertification petition must be filed within the multiemployer unit.

I also conclude that February 25, 2005 “last best and final offer” satisfies the Board’s contract bar requirements as set forth above, and constitutes a bar to further processing of this petition. The February 25 agreement is formal insofar as it is a complete contract. The February 25 agreement contains not only the substantial terms and conditions of employment – it contains the entire agreement between the multiemployer group and the Union. The “last best and final offer” is signed by a representative from the Union and the designated representative of the multiemployer bargaining group. Additionally, as each article was agreed upon, it was signed by the Union representative and the designated representative of the multiemployer group on the date of agreement on the article.

The Union argues that the February 25 agreement became effective on March 19, 2005, when the members ratified the agreement, and therefore the February 25 agreement is not a bar to the current petition that was filed on March 18, 2005. The Union points to language in Article 8 “Wages”, to support its argument that ratification is a condition precedent to contractual validity. Article 8, Section 8 provides

Representatives of the Union and Employers signatory to this Agreement agree to continue to meet and confer in an effort to establish a standardized salary schedule and classifications within the jurisdiction of this Agreement. However, it is expressly agreed and understood that this contract remains in full force and effect from the ratification of the agreement and as such is unimpaired by such meetings of the parties through December 31, 2007.

The intent of Article 8 is to make it clear that the agreed upon wages will remain in effect even though the parties may continue to meet to discuss wages. It also appears that under Article 8, Section 8, the contractual wage rates will go into effect on the date of ratification as opposed to the effective date of the agreement. While Article 8, Section 8 refers to ratification of the agreement, Article 8 does not expressly make ratification a condition precedent to the validity of the agreement as a whole. Moreover, Article 24 "Terms and Duration of Agreement" provides "This Agreement shall be in full force and effect from April 2, 2004 to and including December 31, 2007." Article 24 is silent as to any ratification requirements. Finally, Board law clearly precludes me from considering extrinsic evidence. Therefore, I conclude that the agreement does not expressly provide that prior ratification is a condition precedent for the contract to constitute a bar. See Appalachian Shale Products, 121 NLRB at 1163. Therefore, further processing of the petition is barred by the February 25 agreement because the petition was filed on March 18, after the execution of the agreement.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it is, dismissed.⁷

Signed at Minneapolis, Minnesota, this 29th day of April 2005.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

⁷ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 –14th Street, N.W. Washington, D.C. 20570. This request must be received by the Board in Washington by **May 13, 2005**.